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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,850	05/17/2006	Deborah Addison	101713-5041	8913

28977 7590 04/22/2010
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EXAMINER	
ROBINSON, JAMES MARSHALL	
ART UNIT	PAPER NUMBER
3772	
MAIL DATE	DELIVERY MODE
04/22/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/579,850	ADDISON ET AL.	
	Examiner	Art Unit	
	James M. Robinson	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 November 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-13,20 and 21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7-13,20 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is in response to amendments/arguments filed 11/23/2009. Currently claims 1-5, 7-13, 20 and 21 are pending and claim 1 has been amended.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1- 5, 7, 11, 13, 20 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Canada et al. (US 7118761).

Regarding claims 1, 20 and 21 Canada discloses a wound dressing material (col. 1, lines 7-8) comprising a polymeric substrate (col. 6, lines 15-27), a silver salt (col. 8, lines 21-42) which is a complex of Ag+ and an anionic polymer, and a dyestuff (col. 7, lines 53-61) which is a silver salt photostabilizer.

The recitation -- wherein the dyestuff is a silver salt photostabilizer -- is treated as a functional limitation of the dyestuff. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, because apparatus claims cover what a device is, not what a device does (Hewlett-Packard Co. v. Bausch & Lomb

Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990)). Thus, if a prior art structure is capable of performing the function as recited in the preamble, or elsewhere in a claim, then it meets the claim. As disclosed by applicant, on page 11 lines 6-20, applicant discloses the dyestuffs can stabilize the silver salts against photochemical decomposition by absorbing light near the surface of the material. The dyestuffs also trap photochemically generated free radicals that could otherwise react with the silver. In this way the dyestuffs can act as a photochemical desensitizer. Thus, in the manner as disclosed by applicant, the dyestuff taught by Canada et al. in column 7, lines 53-61 function as, and comprises a silver salt photostabilizer.

Regarding claims 2-5, Canada discloses a wound dressing material wherein the substrate comprises a solid biabsorbable material such as oxidized cellulose (col. 6, lines 25-26) in woven form (col. 5, lines 27-29).

Regarding claim 7, Canada discloses a wound dressing material wherein the silver salt comprises from about 0.01 wt. % to about 5 wt. % of silver, based on the dry weight of the composition (col. 8, lines 43-55).

Regarding claim 11, Canada discloses a wound dressing material wherein the polymeric substrate consists essentially of a mixture of an oxidized cellulose with a collagen, a chitosan, or both a collagen and a chitosan (col. 4 lines 60 - col. 5, line 1).

Regarding claims 13, there is no positive claimed structure but rather a property met by a test is claimed. The properties of the wound dressing material disclosed in Lilienfeld are the same as those claimed by applicant; therefore Lilienfeld's material

would be capable of, if subjected to the DPPH test, exhibiting essentially an antioxidant activity of at least about 15%. Therefore, the limitations of the claim are met.

Further, regarding the limitation of claim 20, "dyestuff in sufficient amount to stabilize the silver salt," the limitation has been treated as an intended use recitation. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987). Since the limitation has not been positively claimed, the dyestuff is capable of performing the recited function.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canada et al. (US 7118761) in view of Camden (US 6136835). Canada substantially discloses the invention as claimed; see rejections to claims 1- 5 and 7 above, including wherein the dyestuff comprises an antioxidant dyestuff (col. 7, lines 53-61). However, Canada is silent to the exact dyestuff selected.

Camden discloses a transdermal patch or dressing such as a bandage (col 16 ln 17-26) impregnated with an active ingredient to treat viral infection (col 1 ln 13-15)

which includes suramin and analogues thereof (col. 13, lines 16-17) which is a known analog of trypan blue.

It would have been obvious to one having ordinary skill in the art at the time of the invention to provide the wound dressing material of Canada with a dyestuff that is of the antioxidant type such as the trypan blue analog suramin in view of the teachings of Camden in order to utilize an antioxidant type dye that is biocompatible.

Regarding claim 10, Canada fails to explicitly disclose the dyestuff is present in an amount of from about 0.2 to about 2wt.% based on the dry weight of the material.

To provide the wound dressing material of Canada with a composition comprising from about 0.2 to about 2wt.% based on the dry weight of the material of dyestuff, based on the dry weight of the composition, it would have been obvious to one of ordinary skill in the art at the time of the invention, in view of the teachings of Camden, in order to optimize the anti-microbial effect of the dressing material. Further, it would be obvious to one of ordinary skill in the art to have chosen an optimal concentration by weight of dyestuff, within the claimed range, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

2. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Canada et al. (US 7118761) in view of Hirsch (1962900).

Regarding claims 12, Canada fails to disclose the use of packaging.

However, Hirsch discloses a wound dressing material wherein the material is packaged in a sterile container (lines 5-11). Further, is well known and conventional in

the art of wound dressings to package wound dressing and keep it sterile prior to use and ensure that the dressing will prevent contamination of the wound at the site of bandage application.

It would have been obvious to one of ordinary skill in the art at the time of the invention to package the wound dressing of Canada with the microorganism impermeable container of Hirsch in order to maintain dressing sterility.

Response to Arguments

3. Applicant's arguments filed11/23/2009 have been fully considered but they are not persuasive. With respect to applicant's position that Canada et al. does not disclose a dyestuff to photostabilize the silver salt, examiner respectfully disagrees. As disclosed by applicant, on page 11 lines 6-20, applicant discloses the dyestuffs can stabilize the silver salts against photochemical decomposition by absorbing light near the surface of the material. The dyestuffs also trap photochemically generated free radicals that could otherwise react with the silver. In this way the dyestuffs can act as a photochemical desensitizer. Thus, in the manner as disclosed by applicant, the dyestuff taught by Canada et al. in column 7, lines 53-61 function as, and comprises a silver salt photostabilizer.

With respect to applicant's position on page 6 of Remarks that no anionic polymer is taught by Canada examiner respectfully disagrees. Canada discloses at col. 8 ln 21-42, wherein it is stated:

> *The particular treatment used herein comprises at least one type of silver-ion containing compounds, or mixtures thereof of different types. The term*

> *"silver-ion containing compounds" encompasses compounds that are either ion-exchange resins, zeolites, or, possibly, substituted glass compounds that release the particular metal ion bonded thereto upon the presence of other anionic species. The preferred silver-ion containing compound for this invention is an antimicrobial silver sodium hydrogen zirconium phosphate available from Milliken & Company, under the tradename AlphaSan.RTM.. Other potentially preferred silver-containing antimicrobials in this invention, including silver zeolites, such as those available from Sinanen under the tradename Zeomic.RTM. AJ, silver exchanged on calcium phosphate available from Sangi under the tradename of Apiscider, and silver glass, such as those available from Ishizuka Glass under the tradename Ionopure.RTM., may be utilized either in addition to, or as a substitute for, the preferred species. Other silver ion containing materials may also be used. Various combinations of these silver containing materials may be made if it is desired to "tune" the silver release rate over time.*

Examiner maintains the resin materials disclosed are analogous to the claimed anionic polymer material.

Conclusion

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M. Robinson whose telephone number is (571) 270-3867. The examiner can normally be reached on Mon-Fri 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James M. Robinson/

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772